

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

August 24, 2021 at 1:30 p.m.

1.	21-22203 -C-13	JOSE OCHOA	MOTION TO CONFIRM PLAN
	RJ-2	Richard Jare	7-13-21 [26]

Final Ruling: No appearance at the August 24, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 42 days' notice was provided. Dkt. 29.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<p>The hearing on the Motion to Confirm is continued to September 28, 2021, at 1:30 p.m.</p>

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 10) filed on June 14, 2021.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 33) on August 2, 2021, opposing confirmation on the following grounds:

1. The 341 Meeting of creditors has not yet been concluded.
2. The debtor testified at the 341 Meeting of Creditors that he has not filed 2020 federal and state income tax returns.
3. The debtor testified he is the sole proprietor of National Pallets, but has not provided a profit and loss statement for the business.
4. The debtor testified that he has 4 employees and does not carry worker's compensation insurance.

August 24, 2021 at 1:30 p.m.

5. The debtor testified that his monthly insurance premium expense, scheduled at \$1,840.00 a month, is actually \$1,900.00 per month.

DEBTOR'S REPLY

The debtor filed a Reply on August 19, 2021, requesting the court continue the hearing to September 28, 2021, because the 341 Meeting was again continued. Dkt. 36.

DISCUSSION

A review of the docket shows the 341 Meeting was continued to September 2, 2021. In light of the debtor's request, and good cause appearing, the court shall continue the hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Jose Alfredo Ochoa, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Confirm is continued to September 28, 2021, at 1:30p.m.

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 19.

The Objection to Confirmation of Plan is overruled.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan because the plan must pay 4.33% to unsecured claims to pass the liquidation test, but only proposes paying 1.5%.

DEBTOR'S OPPOSITION

The debtor filed a Response on August 12, 2021, agreeing with the trustee and proposing to increase the dividend to unsecured claims in the order confirming the plan. Dkt. 20.

DISCUSSION

The debtor's suggested plan modification addresses the trustee's sole ground for Objection.

No other grounds for objection remaining, it appears the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, and the debtor's Chapter 13 Plan (Dkt. 4), is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 14 days' notice was provided. Dkt. 26.

The Motion to Incur Debt is granted.

The debtors filed this Motion seeking authority to incur debt for the purchase of the real property commonly known as 9874 Wildhawk West Dr., Sacramento, California.

The proposed financing is in the principal amount of \$500,762.00, paid at 3.75% interest over a 30 year term. Monthly payments are proposed to be \$3,110.00.

The debtors note that while the mortgage payments will be higher than their monthly rent was, other expenses have been reduced to allow those increased payments to be met. The debtors filed Supplemental Schedules on August 10, 2021, reflecting the changes to expenses and showing the debtor's monthly net income remains the same.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Antoine Darnell Gaines and SaRene Laell Gaines having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.

Final Ruling: No appearance at the August 24, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 41 days' notice was provided. Dkt. 27.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Modify is granted.

The debtors filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

The trustee initially filed an Opposition (Dkt. 28), but later reported grounds for withdrew that Opposition.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify filed by the debtor, Douglas P. Brauner, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan (Dkt. 24) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 12.

The Motion to Extend the Automatic Stay is granted.

The debtor Banisha Monay Evans ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on July 15, 2021, after Debtor fell delinquent in plan payments. Order, Bankr. E.D. Cal. No. 20-24927, Dkt. 29. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because debtor's 3 hour commute for work was too demanding, resulting in loss of income.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)).

Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c) (3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Banisha Monay Evans having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c) (3) (B) for all purposes and parties, unless terminated by operation of law or further order of this court.

Final Ruling: No appearance at the August 24, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 47 days' notice was provided. Dkt. 47.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm is granted.

The debtors filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 46) filed on July 8, 2021.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtors, Sushil Kumar and Angila Devi Kumar, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Amended Chapter 13 Plan (Dkt. 46) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

7. [17-23854](#)-C-13 TIAJUANNA TOLES
[PGM](#)-7 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
7-27-21 [[141](#)]

Final Ruling: No appearance at the August 24, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 28.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion for Allowance of Professional Fees is granted.
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Peter G. Macaluso, the Attorney ("Applicant") for the debtor Tiajuanna Louise Toles ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

The fee sought totals \$840.00, which is for 3.1 hours of work prosecuting a modified plan.

FEES AND COSTS & EXPENSES ALLOWED

The unique facts surrounding the case, including prosecuting a modified plan, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$840.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Applicant is allowed the following

fees and expenses as a professional of the Estate:

Applicant, Professional Employed by the debtor Tiajuanna Louise Toles ("Debtor")

Fees in the amount of \$840.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that the Chapter 13 trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case.

8. [21-21656](#)-C-13 TEMA ROBINSON
[PGM](#)-2 Peter Macaluso

EVIDENTIARY HEARING RE: MOTION
TO VALUE COLLATERAL OF WHEELS
FINANCIAL GROUP LLC
6-9-21 [[22](#)]

Thru #9

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 26.

The Motion to Value is xxxxxx.

The debtor filed this Motion seeking to value the portion of Wheels Financial Group LLC dba 1800LoanMart's ("Creditor") claim secured by the debtor's property commonly known as a 2005 Dodge Ram 1500 (the "Property").

The debtor has presented evidence that the replacement value of the Property at the time of filing was \$4,000.00. Declaration, Dkt. 24.

CREDITOR'S OPPOSITION

The Creditor filed an Opposition on June 29, 2021, arguing that the debtor undervalued the Property and requesting an evidentiary hearing.

DEBTOR'S REPLY

The debtor filed a Reply on July 6, 2021. Dkt. 38. The debtor argues there is no admissible evidence, and because there is no admissible evidence there is no factual dispute requiring an evidentiary hearing.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by the debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxxxxxxxx

9. [21-21656](#)-C-13 TEMA ROBINSON CONTINUED OBJECTION TO
[RDG](#)-1 Peter Macaluso CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-15-21 [[29](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 32.

The Objection to Confirmation of Plan is XXXXXX

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that the plan relies on the outcome of the debtor's Motion To Value (Dkt. 22).

A review of the docket shows the Motion is being opposed by the creditor whose secured claim is proposed to be valued.

At the hearing, XXXXXXXXXXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is XXXXXXXX

Final Ruling: No appearance at the August 24, 2021 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 26.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Objection to Claimed Exemptions is sustained.
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The trustee filed this Objection opposing the debtor's exemption of \$512,581.91 claimed in his residence located at 5541 Kalispell Way, Sacramento, California, pursuant to California Code of Civil Procedure § 704.730.

The trustee argues that the county wide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption was \$419,870.00.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); See also 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

DISCUSSION

The debtor did not file opposition to the trustee's Objection.

Based on the evidence submitted, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claimed Exemptions filed by Gunvant Mangubhai Patel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the debtor's exemption of \$512,581.91 claimed in his residence located at 5541 Kalispell Way, Sacramento, California, pursuant to California Code of Civil Procedure § 704.730 is disallowed.

Tentative Ruling:

A motion to sell requires 21 days' notice. Fed. R. Bankr. P. 2002(a)(2). The Proof of Service shows that only 18 days' notice was provided. Dkt. 33.

While the Notice indicates shortened notice is being sought and an order shortening time will be filed, no application for shortened time has actually been filed.

Because insufficient notice was provided, the Motion shall be denied without prejudice.

The Motion to Sell is denied without prejudice.

The debtor filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as a 2005 Honda Accord EX Sedan ("Property").

The proposed purchaser of the Property is Larry Grant, the debtor's father, and the proposed purchase price is \$1,000.00.

DISCUSSION

As discussed above, insufficient notice was provided. Federal Rule of Bankruptcy Procedure 2002(a) states:

(a) Twenty-One-Day Notices to Parties in Interest. Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

...

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

The proof of service reflects notice was effected August 6, 2021, 18 days prior to the August 24, 2021 hearing date. Dkt. 33.

Therefore, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Helen Elizabeth Wayne ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

12. [21-20476](#)-C-13 CYNTHIA MARTIN
[RDG](#)-1 Gerald Glazer

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
4-5-21 [[12](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 36 days' notice was provided. Dckt. 15.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan because the California Department of Tax and Fee Administration filed a proof of claim establishing a \$85,561.66 secured claim, which is greater than the \$42,000.00 claim anticipated in the plan.

DISCUSSION

At the prior hearing the debtor requested a continuance to allow negotiations with the California Department of Tax and Fee Administration to get it to amend its Proof of Claim.

Since then, the California Department of Tax and Fee Administration has not amended its Proof of Claim. Furthermore, the Sacramento County Tax Collector has filed Proof of Claim, No. 10, asserting a secured claim of \$45,673.58.

It appears Proof of Claim, No. 10 may be duplicative of No. 4. However, without the debtor objecting to the proof of claim, the higher amount will control and the plan will not be feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

13. [21-22079](#)-C-13 MUSTAPHA CHAM
[RDG](#)-1 Anh Nguyen

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-27-21 [[33](#)]

Final Ruling: No appearance at the August 24, 2021 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 36.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled as moot.

A review of the docket shows this case was dismissed on August 20, 2021. Dkt. 42.

Therefore, the Objection will be overruled as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot.

Thru #15

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 141.

The Motion to Modify is XXXXX

The debtors filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 140) filed on June 7, 2021.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 144) on June 14, 2021, opposing confirmation because the modified plan does not provide all disposable income into the plan. The current plan provided for a plan payment increase after a retirement loan is paid off; the modified plan does not propose an increase upon repayment in full of the retirement loan.

DEBTORS' REPLY

The debtors filed a Reply on July 6, 2021. Dkt. 149. The debtors' counsel argues the debtors are proceeding in good faith, that the amended schedules no longer include a retirement loan, and that "the retirement loans were finished being paid as the costs associated with the pandemic increased their expenses so that their was no disposable income to contribute to the Trustee."

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtors, Eddie Gardner and Caryn Gardner, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxxxxxxxxxx

15. [19-27468](#)-C-13 EDDIE/CARYN GARDNER
[AP-1](#) Peter Macaluso

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
5-18-21 [[122](#)]

HSBC BANK USA, NATIONAL
ASSOCIATION VS.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 128.

The Motion for Relief from the Automatic Stay is xxxxxx.

HSBC Bank SA, National Association as Trustee for Ellington Loan Acquisition Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 ("Movant") filed this Motion seeking relief from the automatic stay as to the debtors' real property located at 9475 Mandrake Court, Elk Grove, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors are delinquent 3 postpetition payments. Declaration, Dkt. 125. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$493,726.72, exceeds the value of the Property, which is \$471,844.00. Id.

TRUSTEE'S RESPONSE

The trustee filed a Response on June 7, 2021. Dkt. 131. The Response reports that the debtors are \$11,941.00 delinquent in plan payments, and that \$43,128.37 has been distributed to Movant as a Class 1 claim holder under the confirmed plan.

DEBTOR'S OPPOSITION

The debtors filed an Opposition on June 7, 2021. Dkt. 133. The debtors argue that the value of their home is now \$689,000.00, leaving a significant equity cushion. The debtors also report that they incurred additional expenses due to COVID-19, and that a modified plan is being proposed to bring payments current.

The debtors request the Motion be denied, or continued to the confirmation hearing for the Modified Plan.

DISCUSSION

The parties agreed to a continuance at the prior hearing to allow the debtors to prosecute a modified plan.

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by HSBC Bank SA, National Association as Trustee for Ellington Loan Acquisition Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that **xxxxxxxxxx**